IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

Crl.MC.No. 846 of 2007()

CRMC 597/07 OF SESSIONS COURT, TRIVANDRUM
CRIME 21/07 OF VATTIYOORKAVU POLICE STATION

.....

PETITIONER:

STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY D.G.P. SRI.P.G. THAMBI

RESPONDENTS:
---

1. MOHANAN NAIR, S/O. APPUKUTTAN PILLAI
'MOHANA VIHAR' ERAYANKODE,
CHERIYAKONNI, ARUVIKKARA VILLAGE
THIRUVANANTHAPURAM.

2. NANDA KUMAR, S/O. NAGAMONY, KUZHIVILA VEEDU
THACHANKARI, KANJIRAMPARA WARD
SASTHAMANGALAM VILLAGE, THIRUVANANTHAPURAM.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 846 of 2007

- -

Dated this the 23rd day of March, 2007

O R D E R

The State has preferred this Crl.M.C. seeking to invoke the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. to cancel the bail that has been granted in favour of the respondents by the learned Sessions Judge, Trivandrum.

2. There is a long history behind this case. An accused person was arrested and detained in custody on the allegation that contraband articles offending the provisions of the Abkari Act were found in his premises, in a shed outside his house. His application for bail was considered by the learned Sessions Judge. He raised a grievance that the contraband articles were planted there without his knowledge by some persons, who are inimical towards him. The learned Sessions Judge, while granting bail to the said person, made certain observations in the order dt.24.1.2007, produced as Annex.I. Thereupon investigation appears to have been entrusted to a senior police personnel and in the course of such investigation it was revealed that such contraband articles were planted by the

respondents herein. Accordingly the Investigating Officer arrested the respondents.

3. The learned Sessions Judge was approached by the respondents for grant of bail. The learned Sessions Judge considered all the relevant inputs and came to the conclusion that the respondents are entitled to grant of bail, subject to appropriate conditions. The learned Sessions Judge directed release of the respondents on bail.

4. The State has come up in revision complaining about the improper exercise of discretion by the learned Sessions Judge. The allegations are serious. The respondents have misled the officials of the State to initiate vexatious proceedings against the person, who was earlier arrayed as the accused . Under Section 41A of the Act, when the Prosecutor opposes the bail application, the Court has to consider in detail all the relevant circumstances. Such consideration has not been resorted to by the learned Sessions Judge. This in short is the grievance.

5. The State coming before a superior court to challenge the grant of bail to an accused must really be a rare event and must be done only under compelling circumstances. This court is called upon to invoke the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. and the width and amplitude of powers must bring with it an obligation to be circumspect

and careful while considering invocation of such powers. The court must be satisfied that there are compelling and exceptional grounds to invoke such power.

6. I have gone through the nature of the allegations against the respondents. The nature and quantum of materials collected, the stage of investigation, the play of Section 41A of the Act as also the process of reasoning, by which the learned Sessions Judge came to the conclusion that the respondents, who have been in custody from 7.3.07 to 15.3.2007 can be enlarged on bail.

7. On an anxious consideration of all the relevant inputs, I am satisfied that this is not a case where such extra ordinary inherent jurisdiction under Section 482 Cr.P.C. can or deserves to be invoked. Cancellation of bail must rest on much firmer footing. The consideration which would weigh with the court while considering cancellation of bail is entirely and qualitatively different from those that will be followed while considering grant of bail.

8. This Crl.M.C. in these circumstances deserves to be dismissed and it is accordingly dismissed.

(R. BASANT)
Judge

tm